

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1075 / 13-0939  
Filed January 23, 2014

**WEITZ COMPANY,**  
Petitioner-Appellant,

**vs.**

**JEFF SELIN,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,  
Judge.

Weitz Company appeals the district court order affirming the workers' compensation commissioner's award of additional medical expenses.

**AFFIRMED.**

Timothy W. Wegman and Joseph M. Barron of Peddicord, Wharton,  
Spencer, Hook, Barron, & Wegman, L.L.P., West Des Moines, for appellant.

Thomas A. Palmer of Lawyer, Dougherty, Palmer, & Flansburg, P.L.C.,  
West Des Moines, for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

**BOWER, J.**

Weitz Company appeals the district court order affirming the workers' compensation commissioner's award of additional medical expenses for a hip and back injury. Weitz argues the claimant failed to show the injuries were causally connected to the workplace, and as a result certain medical expenses were unauthorized. We find substantial evidence supports the decision of the commissioner concerning additional care of the hip. However, we find Weitz has failed to preserve error on authorization of additional care for the back injury. We affirm.

**I. Background Facts and Proceedings**

Claimant Jeff Selin (Selin) was injured while working for Weitz Company (Weitz) on January 14, 2009. Selin underwent back surgery following the injury, which was performed by Dr. Nelson. Dr. Nelson imposed lifting restrictions and Selin returned to work.

Selin continued to see Dr. Nelson following his back surgery with limited success. After initially realizing fair progress, Selin began complaining of increasing pain in his back, leg, and buttocks. On July 8, 2009, Dr. Nelson noted Selin was experiencing "greater pain than one would anticipate" in light of unremarkable physical examinations. On July 14, 2009, Selin requested he be excused from work while addressing his ongoing symptoms. Because Selin was primarily engaged in sedentary work, and because his employer was providing him with a space to lie down as needed, Dr. Nelson declined Selin's request. On July 30, 2009, Selin reported a forty-percent improvement, though Dr. Nelson

found his improvement to be much more significant. Selin continued to improve throughout August and September 2009, however, on September 22, 2009, he reported a worsening of symptoms. Dr. Nelson continued to recommend Selin work through the pain and advised him further medical intervention was unlikely to help.

Selin's condition remained unchanged until December 1, 2009, when he reported a slight worsening of pain. At that time Dr. Nelson determined Selin may be best served by a second opinion. On December 29, 2009, after being shown surveillance video of Selin moving freely and performing household tasks, Dr. Nelson found Selin had achieved maximum medical improvement and assigned a ten-percent partial impairment rating.

Selin filed an application for alternative medical care. The application was dismissed because Weitz denied the condition was compensable.

Selin saw Dr. McGuire on April 12, 2010, who referred him to Dr. Kimelman. Selin saw Dr. Kimelman on May 28, 2010. Both doctors discussed hip pain with Selin and causally connected the pain to the workplace injury, though Dr. McGuire felt there may not be anything wrong with the hip. Dr. Kimelman ordered a MRI and bone scan. Selin was also seen by Dr. Igram as part of his treatment with Dr. Kimelman. It is the expenses incurred with Drs. Kimelman and Igram that are contested.

The deputy workers' compensation commissioner awarded Selin permanent partial disability benefits but denied the request for additional medical expenses. The commissioner affirmed the deputy's decision except Selin was

awarded additional medical expenses. The commissioner's decision was affirmed by the district court on appeal.

## **II. Standard of Review**

Our review of agency action is governed by Iowa Code section 17A.19(10) (2011). Where factual determinations are challenged, we must consider whether the commissioner's determination is supported by substantial evidence when the record is viewed as a whole. *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012). Evidence is not insubstantial merely because we may reach a different conclusion. *Id.* When the challenge is to the commissioner's application of law to the facts, we will reverse the commissioner only when the application is irrational, illogical, or wholly unjustifiable. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012).

## **III. Discussion**

Weitz raises two issues on appeal. First, it argues Selin should not have been awarded additional medical expenses related to the hip condition because he failed to establish a causal connection between the hip condition and the workplace injury. Second, it contends the additional medical expenses for Selin's back injury were unauthorized.

### **A. Causation**

Weitz argues Selin failed to establish a causal connection between his hip complaints and the workplace injury. To establish a causal connection, Selin must show the injury was a "rational consequence" of his employment. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 222 (Iowa 2006). Though Weitz couches this as an

issue of substantial evidence, the facts of the injury are not in dispute. Rather, the issue is the commissioner's determination the injury arose out of, or is causally connected to, the employment, which is an application of law to the facts. *Id.* at 219–20. As such, we will uphold the commissioner's decision so long as it is not irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(3)(m).

Causation is normally within the province of expert testimony. *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 559 (Iowa 2010). Dr. Nelson did not address the hip issue as, according to his records, Selin did not complain of hip pain to him. Selin did complain of hip pain to Drs. McGuire and Kimelman, both of whom related the pain to the workplace injury. Selin's credibility, which is within the province of the commissioner, should be considered in light of the discrepancy between his complaints while in a doctor's office and his activities when he believed he was not being observed. *Cedar Rapids Cmty. School Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). Our decision is not impacted by the fact we might, based upon our distant credibility assessment, reach a different conclusion. A rational fact-finder could find a causal connection between the hip complaints and the workplace injury.

#### **B. Authorization**

Weitz contends the additional medical expenses related to Selin's back injury were unauthorized and not compensable. Weitz's argument is that because Dr. Nelson did not refer Selin specifically to Dr. Kimelman, the treatment was unauthorized.

As a threshold matter, Weitz did not deny compensability of the back injury during the alternative medical care proceeding. It was only the hip condition which was contested. There is nothing in the record to indicate Weitz denied compensability, and thereby has lost the right to direct care, of the back injury.

The district court order explains the issues on judicial review as follows: “The Weitz Company asserts it should not be responsible for Selin’s medical treatment bills from the Iowa Orthopedic Center because these bills relate to a hip condition, not to the Claimant’s back injury.” There is no discussion or ruling concerning the authorization of care for the back other than in relation to compensability for the hip condition. “When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.” *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 670-71 (Iowa 2005). This is normally done through a rule 1.904 motion. *Id.*; Iowa R. Civ. P. 1.904. Weitz did not request a ruling on authorization of the back condition, and without a ruling from the district court we will not consider authorization of treatment for this condition. See *Hill*, 705 N.W.2d at 671.

**AFFIRMED.**